

Claimant worked seventeen years for respondent. On January 21, 2002, while reaching up to push a hind quarter of beef he felt a pop in his left shoulder. Respondent admits timely notice and the compensability of claimant's left shoulder injury.

Claimant does not allege that his right upper extremity was injured as a result of the specific accident on January 21, 2002, nor does it appear that he alleging that his right upper extremity injury is a direct and natural consequence of his left upper extremity injury. Instead, the right upper extremity condition appears to be a repetitive trauma injury that occurred each and every working day. Claimant last worked for respondent on or about January 28, 2002.

Claimant admits that he never reported his right upper extremity symptoms to anyone while he was working at IBP. Claimant said that he was not aware of the nature and extent of his right upper extremity condition until he was examined by Dr. Carabetta on July 2, 2002. The first time respondent received notice of an accidental injury to claimant's right upper extremity was when claimant filed an Amended Application for Hearing on July 12, 2002. As claimant's Amended Application for Hearing was not served within seventy-five (75) days of his January 21, 2002 accident, this notice was not timely even if just cause existed for extending claimant's time for giving notice from ten (10) to seventy-five (75) days.²

Award

WHEREFORE, the January 8, 2003 Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery is modified to limit claimant's preliminary benefits to his left upper extremity and shoulder.

IT IS SO ORDERED.

Dated this _____ day of May 2003.

BOARD MEMBER

c: Michael G. Patton, Attorney for Claimant
Gregory D. Worth Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Director, Workers Compensation Director

² K.S.A. 44-520.

MICHAEL A. MERCER

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